

**Letter of Findings: 01-20182477
Individual Income Tax
For the Year 2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual provided sufficient documentation to establish that he had not received credit for Indiana county tax which had been withheld by his employer. The amount due for the tax year at issue will therefore be reduced to reflect this new information.

ISSUE

I. Individual Income Tax–Local Withholding.

Authority: IC § 6-3-4-8; IC § 6-3.6-8-3; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests a portion of Indiana income tax imposed for the tax year 2017.

STATEMENT OF FACTS

Taxpayer is an individual who worked in Indiana but resided in a neighboring state during the tax year 2017. Taxpayer's employer withheld state and county income taxes from Taxpayer's wages. Taxpayer timely filed a 2017 Indiana income tax return. After review of that return, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional income tax. The Department therefore issued a proposed assessment for additional Indiana income tax, penalty, and interest. Taxpayer filed a partial protest of the assessment and opted to waive the administrative hearing, requesting the Department to make its final determination based on the information provided with the protest letter. This Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax–Local Withholding.

DISCUSSION

Taxpayer protests the imposition of Indiana income tax for the tax year 2017. Specifically, Taxpayer states that the Department did not give him credit for local taxes which his employer withheld from his wages in 2017. The Department based its determination that Taxpayer owed additional Indiana AGIT on its review of Taxpayer's W-2 form. That form lists the amount of wages Taxpayer received from his employer and the amount withheld for tax purposes. The Department believed that the employer had withheld taxes for Taxpayer's state of residence, but not for Indiana. Taxpayer protests that his employer withheld state taxes for his state of residence and local taxes for his state of employment and that the local taxes were properly withheld for Indiana. Taxpayer argues that the amount of local taxes withheld for Indiana should be credited towards his Indiana income taxes for 2017.

As a threshold issue, it is the taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E. 2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of

[the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 6-3-4-8 provides in relevant part:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. *The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total local income tax rate that the taxpayer is subject to under IC 6-3-6, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).* However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3-6](#) the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed one thousand dollars (\$1,000). An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period.

(c) For purposes of determining whether an employee is subject to taxation under [IC 6-3-6](#), an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in [IC 3-5-2-40.1](#)); and

(2) for the performance of the duties of the precinct election officer imposed by [IC 3](#) that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

(1) the total amount of wages paid to the employer's employees;

(2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;

(3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;

(4) the amount of income tax, if any, imposed under [IC 6-3-6](#) and deducted therefrom in accordance with this section; and

(5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under [IC 6-3-6](#), withheld from the employees, on the forms prescribed by the department. In addition, the employer shall file Form WH-3 annual withholding tax reports with the department not later than thirty-one (31) days after the end of the calendar year.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld

pursuant to this section.

(g) The provisions of [IC 6-8.1](#) relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes, shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.6](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.6](#), refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

....

(Emphasis added).

Also, IC § 6-3.6-8-3 states:

(a) For purposes of this article, an individual shall be treated as a resident of the county in which the individual:

- (1) maintains a home, if the individual maintains only one (1) home in Indiana;
- (2) if subdivision (1) does not apply, is registered to vote;
- (3) if subdivision (1) or (2) does not apply, registers the individual's personal automobile; or
- (4) spent the majority of the individual's time in Indiana during the taxable year in question, if subdivision (1), (2), or (3) does not apply.

(b) *The residence or principal place of business or employment of an individual is to be determined on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of the individual's residence or principal place of employment or business to another county in Indiana during a calendar year, the individual's liability for tax is not affected.*

(c) Notwithstanding subsection (b), if an individual becomes a local taxpayer for purposes of [IC 36-7-27](#) during a calendar year because the individual:

- (1) changes the location of the individual's residence to a county in which the individual begins employment or business at a qualified economic development tax project (as defined in [IC 36-7-27-9](#)); or
 - (2) changes the location of the individual's principal place of employment or business to a qualified economic development tax project and does not reside in another county in which a tax is in effect;
- the individual's adjusted gross income attributable to employment or business at the qualified economic development tax project is taxable only by the county containing the qualified economic development tax project.

When Taxpayer filed his 2017 Indiana return, he included the W-2 form supplied by his employer. That W-2 showed state tax withholding for Taxpayer's state of residence and an amount of local tax withheld with the name of a county, but no Indiana county number listed. The Department therefore assumed that the local tax which had been withheld was for a county in Taxpayer's state of residence. The Department therefore considered the county listed on the W-2 to be Taxpayer's out-of-state county.

After review of the W-2 and other Department records, the Department now agrees that the county listed on the W-2 is the Indiana county of Taxpayer's employment. Since Taxpayer's employer did withhold local income tax, as required by IC § 6-3-4-8(a), the Department will recalculate the total amount of income tax due for 2017. The Department will then issue a revised bill reflecting the reduced amount of income tax due with penalty and interest reduced accordingly. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

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An [html](#) version of this document.